

## **Remarks**

### **Amendments**

Claim 13 has been amended to correct a typographical error. Claim 27 has been amended to correct an erroneous dependency. Applicants note that claim 27 should be in Group IV now that the dependency has been corrected.

Amendments to the claims are made without prejudice or disclaimer, and do not constitute amendments to overcome any prior art or other statutory rejections. They are fully supported by the specification as filed and do not introduce new matter. Additionally, these amendments are not and should not be construed as admissions regarding the patentability of the claimed or canceled subject matter. Applicants reserve the right to pursue the subject matter of previously presented claims or any broader claims in this or in any other appropriate patent application. Accordingly, Applicants respectfully request the entry of the amendments presented.

### **Substance of Examiner Interview**

On April 11, 2009, the undersigned participated in a telephonic interview with Examiner Ware. The undersigned explained to Examiner Ware that some pending claims were missing from the restriction requirement issued on April 3, 2009. Examiner Ware indicated that a supplemental restriction requirement would be issued that addressed all pending claims. No exhibits were shown and no demonstrations were conducted. All pending claims were discussed. No prior art was discussed. No other pertinent matters were discussed.

### **Restriction Requirement**

Applicants elect Group I, claims 1-3, 5, 17-20, 24, 27, and 28-29, with traverse. Claims encompassing the elected invention are 1-3, 5, 17-20, 24, and 28-29.

The restriction between Group I (claims 1-3, 5, and 24), Group II and Group III is improper. These claims all recite compositions with different preambles (Group I: “a composition”; Group II: “a food composition”; Group III: “a dentifrice, oral rinse, chewing gum, lozenge, or topical agent composition”), but the same compositions (one or more isolated *Streptococcus oralis* strains and one or more isolated strains of *Streptococcus uberis*). Additionally, the compositions have the same functional activities. Therefore, Group I (claims 1-3, 5 and 24), Group II, and Group III do not constitute independent or distinct inventions and should be examined together.

Furthermore, the restriction between Group I (claims 17-20 and 28-29) and Group IV is improper. These claims recite different preambles, but have the same active steps (administration of the compositions of claims 1 or 24). The active steps have similar outcomes, that is, treatment, prevention or both treatment and prevention of periodontitis, dental caries, *Candida* or fungal overgrowth, halitosis, xerostomia-induced dental caries or periodontal disease, oral bacterial infections, oral bacterial disease, oral wounds or a combination thereof. Therefore, Group I (claims 17-20 and 28-29), Group IV do not constitute independent or distinct inventions and should be examined together.

Additionally, restriction of an application is discretionary, and a restriction requirement is made only to avoid placing an undue burden on the Examiner and the Patent Office. Where claims such as those presented herein, can be found examined together without undue burden, the Examiner must examine the claims on the merits. *See MPEP 803.01.*

No undue burden exists to examine Groups I-IV in their entirety. In particular, claims in Groups I (claims 1-3, 5, and 24), II and III recite closely related inventions based on the same composition: (one or more isolated *Streptococcus oralis* strains and one or more isolated strains of *Streptococcus uberis*). Additionally, the method claims of Group I (claims 17-20 and 28-29) and Group IV recite the same active steps (the administration of the composition of claim 1 or 24) and have similar outcomes.

Accordingly, Applicants respectfully request that claims 1-3, 5, 9-11, 13-15, 17-29 be examined on the merits in their entirety.

Respectfully submitted,

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